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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

Case No. 2:16-cr-00279-JAD-PAL

8 Plaintiff,

9 v.

**ORDER**

10 JOSHUA SADAT WASHINGTON,

(Mot. Contempt – ECF No. 231)

11 Defendant.

12 This matter is before the court on Defendant Joshua Sadat Washington's Motion to Hold  
13 Corporation Trust Company of Nevada in Contempt (ECF No. 231). This Motion is referred to  
14 the undersigned pursuant to 28 U.S.C. § 636(b)(3) and LR IB 1-7(g) of the Local Rules of Practice.

15 Mr. Washington was initially charged in a Criminal Complaint (ECF No. 1) filed August  
16 17, 2016. A federal grand jury returned an Indictment (ECF No. 11) on September 28, 2016,  
17 charging Washington with interference with commerce by robbery and transportation of stolen  
18 goods. A Superseding Indictment (ECF No. 19) was filed November 9, 2016. A Second  
19 Superseding Indictment (ECF No. 29) was returned January 25, 2017, charging Mr. Washington  
20 with an additional brandishing count: Count One – interference with interstate commerce by  
21 robbery in violation of 18 U.S.C. § 1951; Count Two – brandishing a firearm in furtherance of a  
22 crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(ii) and § 2; Count Three – transportation  
23 of stolen goods in violation of 18 U.S.C. § 2314.

24 Since charges were initially filed, the parties stipulated to numerous continuances of the  
25 trial date and motions deadline. *See, e.g.*, ECF Nos. 23, 26, 28, 36, 37, 68, 75, 89, 93. The trial  
26 was ultimately set for February 27, 2018, with calendar call on February 20, 2018. Order  
27 Regarding Trial (ECF No. 173). Calendar call and a jury trial proceeded as scheduled. Mins. of  
28 Proceedings (ECF Nos. 182, 190, 200, 203, 206, 217, 219).

1 About three weeks prior to trial, Washington filed his first Motion Requesting Subpoena  
2 (ECF No. 160) for documents from Storage West. The court found that Mr. Washington met his  
3 threshold burden of establishing the need for pretrial production of the materials described in his  
4 motion and granted his request. Feb. 6, 2018 Order (ECF No. 165). The United States Marshals  
5 Service (“USMS”) was instructed to attempt service of a subpoena duces tecum on an expedited  
6 basis. *Id.* The custodian of records for Storage West was ordered to produce responsive records  
7 by 4:00 PM on February 19, 2018. *Id.* The subpoena was returned unexecuted on February 9,  
8 2018, because the facility manager was unable to accept service and directed that service be made  
9 on Storage West’s resident agent, the Corporation Trust Company of Nevada (“Corporation  
10 Trust”), which is located in Reno, Nevada. *See* Subpoena Returned Unexecuted (ECF No. 174).

11 On the first day of trial, February 27, 2018, Washington filed an Emergency Motion for  
12 Subpoena (ECF No. 193) seeking production of materials from Storage West. The new motion  
13 requested the same materials but with service of the subpoena to Corporation Trust. The court  
14 granted the motion and instructed the USMS to attempt service on an expedited basis to  
15 Corporation Trust. Feb. 27, 2018 Order (ECF No. 198); Subpoena (ECF No. 199). The custodian  
16 of records was ordered to produce responsive records by 4:00 PM on March 5, 2018. *Id.*

17 The jury returned a guilty verdict on March 7, 2018. Mins. of Proceedings (ECF No. 219).  
18 The subpoena was also returned unexecuted on March 7, 2018, because there was insufficient time  
19 to accomplish service. *See* Subpoena Returned Unexecuted (ECF No. 218). A notice of electronic  
20 filing was delivered to Washington’s stand-by counsel, Telia U. Williams, Esq., regarding the  
21 unexecuted service. *Id.*

22 Washington’s current Motion (ECF No. 231) asks the court to hold Storage West’s resident  
23 agent, Corporation Trust, in contempt because he never received documentation from Storage  
24 West. The motion states that Ms. Williams was unsuccessful in her attempts to contact anyone  
25 from Corporation Trust during the trial. After the trial, Washington’s wife was given a different  
26 address in Carson City, Nevada, for Corporation Trust. Mr. Washington argues the subpoenaed  
27 documentation was important evidence he needed to prepare for trial and is still important. Thus,  
28 he asks the court to help him get the information and hold Storage West in contempt.

1 Non-compliance with a subpoena issued pursuant to under Rule 17 of the Federal Rules of  
2 Criminal Procedure may be deemed a contempt of court. Fed. R. Crim. P. 17(g) (“A magistrate  
3 judge may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued  
4 by that magistrate judge as provided in 28 U.S.C. § 636(e).”). “However, before a person can be  
5 found in contempt, it must be shown that he had the ability to comply with the subpoena.” *United*  
6 *States v. Cederquist*, 641 F.2d 1347, 1352 (9th Cir. 1981) (citing *United States v. Jacobs*, 322 F.  
7 Supp. 1299, 1302 (C.D. Cal. 1971)).

8 Here, Mr. Washington has not shown that Corporation Trust or Storage West had the ability  
9 to comply with the subpoenas. In criminal cases involving an indigent defendant, the USMS serves  
10 a subpoena upon order of the court. Fed. R. Crim. P. 17(b), (d); 28 U.S.C. §§ 1821, 1825. Service  
11 was not completed for either of the subpoenas in this case. *See* Subpoenas Returned Unexecuted  
12 (ECF Nos. 174, 218). It was Washington’s responsibility to provide the USMS with sufficient  
13 information to accomplish service. *See Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994),  
14 *abrogated on other grounds, Sandin v. Conner*, 515 U.S. 472 (1995). In addition, he did not  
15 provide enough time for the USMS to complete service of the second subpoena before the jury  
16 rendered its verdict. Because Corporation Trust or another agent of Storage West authorized to  
17 accept service of legal process were not served they did not disobey the subpoena and there is no  
18 basis for the court to hold either entity in contempt.

19 To the extent Washington’s motion requests a new subpoena to Storage West, that request  
20 is denied. A Rule 17 subpoena request is untimely when the request is made at the end of trial or  
21 after a verdict is rendered. *United States v. Etimani*, 328 F.3d 493, 501 (9th Cir. 2003).

22 **IT IS ORDERED:** Defendant Joshua Sadat Washington’s Motion to Hold Corporation  
23 Trust Company of Nevada in Contempt (ECF No. 231) is **DENIED**.

24 Dated this 1st day of June, 2018.

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26   
27 PEGGY A. FEEN  
28 UNITED STATES MAGISTRATE JUDGE